

## **IN THE DRAWINGS**

Submitted herewith is a new drawing sheet labeled Figs. 4a and 4b, depicting first and second sides of a measurement tape according to the instant application. Support for these new drawings can be found in the Published Application at paragraph [0025] wherein it is stated that “example embodiments of measuring device 10 may employ sets of indicia on both sides of strip 12.” Accordingly, no new matter is added by including the new Figs.

## REMARKS

Claims 13-18 and 31 are in this application with claims 13, 16 and 31 amended herein.

No new matter is added by this amendment.

Initially, the office action objects to claim 13. It is believed that by the instant amendment to claim 13 this issues has been rendered moot.

Next, the drawings are objected to. Submitted herewith are new drawings 4a and 4b, which depict the features alleged not to be found in the original drawings. Withdrawal of the objection in view of the new drawings is requested.

On the merits, claims 13-18 and 31 are rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,237,243 to Cook. Further, claims 13-18 and 31 are rejected under 35 U.S.C. § 103(a) as unpatentable over Horning in view of U.S. Patent No. 5,884,408 to Simmons.

Independent claim 13 is amended herein to clarify recite the following features:

a first set of indicia comprising marks spaced at one inch intervals and located on a first side of a tape of the tape measuring device

a second set of indicia comprising marks spaced at intervals correlating to the first scaling ratio and depicting a defined number of feet per inch, said second set of marks located on a second side of the tape, wherein

the first set of indicia and the second set of indicia start at a common end of the tape, and wherein the second set of indicia include numerals shown next to each mark denoting the number of feet at the distance of each mark with respect to the first scaling ratio.

It is respectfully submitted that the relied upon portions of Cook, Horning and Simmons do not teach or suggest, a tape having inch measurements on a first side and feet measurements

at a scaled ratio on the second, wherein the marks for the inches and feet begin at a common end of the tape. In Cook, the appliqué is not coordinated with the end of the tape, such that the inch measurement on the first side corresponds directly to the scaled distances on the second side. The same can be said for the relied upon portions of Horning. As is common in traditional carpenter's rules, the marks do not begin at the end of the rule but rather at some distance in from the end of the rule, thus Simmons and Horning, used alone or in combination do not teach these features. Accordingly, independent claim 1 patentably distinguishes over the relied upon portions of the cited references. Claims 14-18, which depend from claim 13, are allowable therewith. For similar or somewhat similar reasons independent claim 31 patentably distinguishes over the relied upon portions of the cited references.

Further, with respect to the rejection under 35 U.S.C. § 103(a) on the issue of obviousness, submitted herewith is a declaration of the inventor Jeffrey Erdfarb, describing how the present invention meets a long felt need in the industry. In support of the declaration is an article from the July/August 2007 Building Products magazine in which the commercial embodiment of the present application, having all the features recited in the claims received an MVP award and is praised stating: "Mathematically impaired contractors, rejoice! Planreader tape measures are designed to make it easier to take measurements off blueprints in the field." (Decl. Exhibit B, pg. 40).

Further the publication noted:

the smallest, inexpensive products are often the most valuable. The Builderscale Planreader tape measure is a good example. Its designed to make it easier to take measurements off blueprints in the field. On the reverse side of the tape are both the standard commercial construction scale and the residential construction scale. The markings represent the actual feet in inches drawn on

the plan, eliminating the hassle of converting fractional numbers to feet and inches.

(Decl. Exhibit B, pg. 17). Thus the configuration of a tape measure according to the presently claimed invention with inches on a first side and a second side with markings denoting a number of feet according to a scaling ratio, clearly meets a long felt need in the contracting industry.

Its not just the judges at Building Products who have taken notice but also manufacturers as well. As noted by Mr. Erdfarb, Klein Tools, a major tool manufacturing company with world wide distribution and sales, has agreed to begin the sale of the Builderscale/Planreader<sup>®</sup> tape measure, a device as claimed in the instant claims, and has begun this process with an order of some 25,000 pieces. Thus without question, the claimed invention has meet with commercial success and it is the unique combination of claimed features on a single tape measure that had let to this success.

Accordingly, for meeting a long felt need of the industry and for having achieved tremendous commercial success, the secondary considerations of non-obviousness should overcome the instant rejection under 35 U.S.C. § 103(a).

### Conclusion

In view of the remarks set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper, including any necessary extension fees, may be charged on Deposit Account 50-1290.

Respectfully submitted,



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